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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 ADVENT, INC., a California corporation,

19 Plaintiff,

20 v.

21 NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA, a
22 Pennsylvania corporation,

23 Defendant.
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CASE NO. CV-13-0561 LHK

Hon. Lucy H. Koh

**STIPULATION AND [PROPOSED]
ORDER RE MOTION TO DISMISS AND
FIRST AMENDED COMPLAINT**

Complaint Filed: January 3, 2013

WHEREAS, plaintiff Advent, Inc. (“Advent”) filed a complaint against defendant National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”) alleging causes of action for declaratory relief and breach of contract in the Superior Court of California for the County of Santa Clara;

WHEREAS, National Union filed a Notice of Removal of Action (Doc. 1) on or about February 7, 2013;

WHEREAS, National Union filed a Notice of Motion and Motion to Dismiss Plaintiff’s Complaint (Doc. 10) on or about February 14, 2013, with a scheduled hearing date of July 11, 2013;

WHEREAS, Advent and National Union (collectively referred to herein as the “Parties”), met and conferred on February 20, 2013, regarding National Union’s Motion to Dismiss;

WHEREAS, National Union filed an Amended Notice of Motion and Motion to Dismiss Plaintiff’s Breach of Contract Cause of Action (Doc. 14) on or about February 20, 2013;

WHEREAS, the Parties have further met and conferred to resolve issues relating to Advent’s breach of contract cause of action amicably and to minimize any burden on this Court:

NOW, THEREFORE, IT IS STIPULATED by and between Advent and National Union, through their counsel of record, that:

1. Advent shall file a First Amended Complaint, which contains only a single cause of action for declaratory relief;

2. Advent’s withdrawal of its cause of action for breach of contract is done without prejudice to Advent’s right to later assert this cause of action and the cause of action for breach of contract shall be deemed to be dismissed without prejudice; and

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3. National Union shall withdraw its Amended Notice of Motion and Motion to Dismiss Plaintiff's Breach of Contract Cause of Action.

DATED: March 5, 2013

DICKSTEIN SHAPIRO LLP

By: /s/ Fiona A. Chaney
Fiona A. Chaney
Attorneys for ADVENT, INC.

DATED: March 5, 2013

MCCURDY & FULLER LLP

By: /s/ Kevin P. McCurdy
Kevin P. McCurdy
Attorneys for NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH,
PA., a Pennsylvania corporation

IT IS SO ORDERED. In light of this Order, the hearing on Defendants' Motion to Dismiss, currently scheduled for July 11, 2013, is hereby VACATED.

DATED: March 5, 2013


HONORABLE LUCY H. KOH

PROOF OF SERVICE VIA E-MAIL

Advent, Inc. v. National Union Fire Insurance Company of Pittsburgh, PA
Case No. CV13-0561 LHK

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2049 Century Park East, Suite 700, Los Angeles, California 90067.

On March 5, 2013, I served the document(s) described as:

**STIPULATION AND [PROPOSED] ORDER RE
MOTION TO DISMISS AND FIRST AMENDED COMPLAINT**

☒ by placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as follows:

Kevin G. McCurdy, Esq.
McCURDY & FULLER LLP
4300 Bohannon Drive, Suite 240
Menlo Park, CA 94025

Attorneys for Defendant NATIONAL
UNION FIRE INSURANCE COMPANY
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☒ **BY E-MAIL VIA PDF FILE:** By transmitting on this date via e-mail a true and correct copy scanned into an electronic file in Adobe "pdf" format. The transmission was reported as complete and without error and/or the documents were served electronically through the court's CM/ECF system.

I declare that I am employed in the office of a member of the State Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on March 5, 2013, at Los Angeles, California.

/s/ Cindy Price

Cindy Price